

**In the Matter of the Tobacco
and Confectionery Licenses
Held by Edman Inc.
d/b/a Downtown Tobacco
428 Hennepin Ave S.,
Minneapolis, MN 55403
L022-50390, L153-50106**

**Findings of Fact,
Conclusions and
Recommendations**

This matter came before the Department at a License Settlement Conference on Wednesday, June 4, 2008 at 1:30 p.m. in Room 1-C, Minneapolis City Hall. Appearing on behalf of the licensee were David L. Valentini, Attorney at Law, and Abdelsalam Elazab, owner. Appearing for the City were: Minneapolis Police First Precinct Lt., Travis Glamppe; Minneapolis Police Community Response Sgt., Dan Pommeranke; Lois Conroy, First Precinct Community Attorney; Leanne Selander, License Inspector; and Ricardo Cervantes, Deputy Director of Licenses and Consumer Services. Based on information presented at the hearing, the Department makes the following findings of fact, conclusions, and recommendations:

FINDINGS OF FACT

1. On April 9, 2008, Zanab Hussein Elazab, a Downtown Tobacco sales clerk, and sister of the owner, plead guilty to knowingly selling drug paraphernalia to a Metro Gang Strike Force undercover officer while working behind the counter of the business on October 25, 2007. Prior to selling the drug paraphernalia, Ms. Elazab demonstrated to the undercover officer how the inside of an ink pen could be used as a crack pipe.
2. On March 19, 2008, a 16 year old tobacco compliance checker purchased cigarettes from employee Zanab Elazab at Downtown Tobacco. The licensee admitted to the violation and paid a \$250 fine.
3. Downtown Tobacco's surveillance camera was inoperable on March 19, 2008, and the store was issued an order to bring it into compliance. On April 30, 2008, they were issued a \$200 citation for failure to comply with the order.
4. The licensee agreed in a September 20, 2004, Hennepin County District Court Settlement Agreement to comply with all laws and ordinances of the state and city in return for the City issuing a Conditional Use Permit (CUP) allowing the business to remain open daily until 2:00 AM.

CONCLUSIONS

1. An employee of the licensee Knowingly or Intentionally Delivered Drug Paraphernalia in violation of MCO 223.240.
2. An employee of the licensee sold cigarettes to a minor tobacco compliance checker in violation of MCO 281.50.
3. The licensee operated his business without a surveillance camera and failed to comply with an order to install an operational system in violation of MCO 259.230(d).
4. The licensee's failure to comply with MCO 223.240, MCO 281.50, and MCO 259.230(d) violated a Settlement Agreement between the City and the licensee.
5. The licensee failed to meet the minimum standards of MCO 259.250 which governs licensed businesses in that "the licensee is directly and vicariously responsible for any violations on the premises...by any employees..." and that it was the licensee's responsibility to "maintain and operate the business in compliance with all applicable laws and ordinances."

RECOMMENDATIONS

The Department acknowledges the licensee's interest in resolving the issues at its licensed establishment. Due to the expressed willingness of all parties to bring the property into compliance with all applicable ordinances, statutes and regulations the Department makes the following recommendations:

1. A civil penalty in the amount of \$5000 shall be assessed to the licensee, comprised of \$3396 in cost recovery and a \$1704 sanction. The \$1704 sanction shall be stayed on the condition there are no same or similar violations for a period of two years from the date of execution of this agreement. A same or similar violation committed within two years of the execution of this agreement for a same or similar violation shall result in the imposition of the stayed fines.
2. The licensee shall remit \$3396 in costs of enforcement within one week of the execution of this agreement by mailing or delivering a check payable to "The City of Minneapolis" to the attention of Licenses and Consumer Services, Minneapolis City Hall, Room 1C, 350 South 5th Street, Minneapolis, MN 55415.
3. The licensee shall comply with all applicable regulations, laws and ordinances governing its tobacco and confectionery food licenses, and shall comply with all conditions contained herein.
4. The licensee agrees not to sell any items which are commonly used by drug users and drug dealers. These items include:

Glass pipes or tubes, scrubbers such as Brillo or Chore Boys, small zip lock-type bags also known as jewelry bags, regular size zip lock-type bags, marijuana or herbal pipes, single, inexpensive cigars sometimes referred to as blunts, cigars not packaged by the manufacturer or with a broken, opened or altered manufacturer's packaging, brass pipe screens, medal pushers, cigarette filters, blunt-type tobacco leaves, bubblers, roach clips, small spoons, bongs, designer lighters (for instance, shaped like guns, or adorned with marijuana leaves), hookahs, hand-painted blown glass items, cocaine or herbal grinders, snorters, medal pipes, razor blades, small mirrors, small glass vials, vaporizers, straws, tin foil, pens, glass tubes of car deodorant, activated charcoal, chopsticks, tire gauges, baking soda, rubber cement, correction fluid, aerosol cans, balloons, small folding scissors, film canisters, Visine-type eye drops, rubber tubing, allergy medicines, baby laxative, brass knuckles, knives, dice and needles.

5. The licensee shall not sell single cigarettes, per Minneapolis Code of Ordinances (MCO) 281.45(a) which states no person shall sell cigarettes in any manner other than by the package or multiples thereof to which a stamp has been affixed in accordance with Minnesota Statutes 297.03, Subd.1.
6. The licensee agrees to not supply matches to customers who do not purchase tobacco.
7. "No Trespassing" signs shall remain clearly posted on the exterior of the business. Staff will immediately ask people that are observed loitering in the immediate vicinity of the store to leave. If the loitering activity persists, staff will call 9-1-1 and request police assistance to alleviate the loitering activity. The business agrees to cooperate fully in the prosecution of criminal activity, per MCO 259.250(1) (i), and Minnesota Statute 609.605.
8. The licensee agrees to clearly post "No Loitering" and "No Panhandling" signs.
9. The licensee shall have adequate staff available, to include employees from his business next door, from 3:00 p.m. until the close of business each day to ensure monitoring of the exterior and to reduce negative behaviors, per MCO 259.250(1)(i), (3) and (4).
10. The licensee agrees to keep all exterior and interior lights illuminated and functioning properly, per MCO 259.250 (8).
11. All windows will be free of signs and other items that block the view in and out, as is specified in MCO 543.350 governing Window Signs.
12. The licensee shall comply with the Surveillance Camera Ordinance, per MCO 259.230.
13. The licensee agrees to clean the property, and all areas within 100 feet of the property line of litter and trash twice daily. The business shall maintain a litter receptacle in front of the business that is convenient for customer use.
14. Prior to the execution of this agreement, the licensee shall provide proof of Worker's Compensation insurance for all employees, except those exempted from state statute, to the Licensing Division.

15. The licensee shall comply with MCO 536.20 of the Zoning code governing Specific Development Standards of Tobacco shops, which states that the first floor window area facing the street shall not be reduced. Within two weeks of execution of this agreement, the licensee agrees to remove all newspaper covering the premises' windows.
16. The licensee shall comply with MCO 537.110 of the Zoning code by removing the Automated Teller Machine (ATM) to a location within the principal structure within two weeks of the execution of this agreement.
17. The licensee shall comply with MCO 259.125 governing Business Premise Maintenance Requirements which requires the removal of graffiti and keeping the exterior of the building in a workmanlike state of repair. Within two weeks of execution of this agreement, the licensee agrees to remove all graffiti and repair the wooden support beam.
18. Within two weeks of execution of this agreement, the licensee shall provide training for all employees on preventing the sale of tobacco to minors, per MCO 281.45(d); and in addition, a written policy on preventing such sales shall be provided to each employee as part of the training. The written policy shall cover management policies, employee responsibilities and consequences, point of sale procedures, and a signed employee acknowledgment. A copy shall also be provided to Licensing prior to the signing of this agreement.
19. Within two weeks of execution of this agreement, the licensee agrees to use an ID scanner at the point of sale to verify the age of any tobacco purchaser appearing younger than 30 years of age.
20. Within two weeks of execution of this agreement, the licensee shall post signage by the register that the selling of tobacco products to minors is illegal and prohibited.
21. To discourage panhandling in the vicinity of the business, the licensee agrees not to take payment for purchases in the form of coins only.
22. The licensee agrees not to exchange currency for a fee without a currency exchange license.
23. Within two weeks of execution of this agreement, the licensee agrees to comply with any outstanding orders.
24. The licensee agrees to a 3-day business closure, to include a weekend, effective within two weeks of executing this agreement.
25. Within one week of execution of this agreement, the licensee agrees to suspend employee Zana Elazab for 3 months. Failure on the part of employee Elazab to comply with all applicable regulations, laws and ordinances governing the business' tobacco and confectionery food licenses shall result in her termination.
26. The licensee shall conspicuously post the above business operating conditions, 1 through 26, alongside its license certificate, per MCO 259.250.

Edman, Inc. understands that the holding of a business license in the City of Minneapolis is both a privilege and a responsibility, and, as such, it is understood that there is a minimum standard that shall be met in order to hold such a license. Furthermore, it is understood that a license holder is responsible to ensure that its business operates in compliance with all applicable laws, ordinances and regulations. As such, it is understood and agreed that any violation of the above Recommendations shall constitute just and proper cause for the immediate imposition of any agreed upon or stayed penalties. It is further understood that compliance with the above Recommendations is a requirement for continuing to hold a license and that failure to comply with any of these conditions may result in additional adverse license action.

I have read and understand the above findings of fact, conclusions, and recommendations. I agree with their contents and I agree with the above noted Recommendations. I understand that the failure of my business to adhere to this agreement may be cause for further suspension, revocation, or denial of my license. I understand that this report must be accepted and approved by the Minneapolis City Council and Mayor.

Based upon the foregoing, this agreement is FREELY & VOLUNTARILY ENTERED INTO IN GOOD FAITH:

For Edman, Inc.

By: Abd El Salam Elazab
(signature)

Its: owner
(title)

Dated: 9/22/, 2008.

For the City of Minneapolis:

Ricardo Cervantes
Ricardo Cervantes
Deputy Director of Licenses

Dated: 10/6/, 2008.